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Colorado General Assembly

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MEMORANDUM

TO: David Silverstein and Andrew Graham
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: February 20, 2018
SUBJECT: Proposed initiative measure 2017-2018 #147 concerning Transparency in Health Care Insurance Carrier Billing

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This proposed initiative was submitted with proposed initiative 2017-2018 #146. The comments and questions raised in this memorandum will not include comments and questions addressed in the memorandum for proposed initiative 2017-2018 #146, except as necessary to fully understand the issues raised by this proposed initiative. Comments and questions addressed in the memorandum for proposed initiative 2017-2018 #146 may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Moreover, earlier versions of this proposed initiative, proposed initiatives 2017-2018 #85, #118, #119, #120, #121, #122, and #123 were the subject of prior memorandums and discussed at public hearings as follows: 2017-2018 #85 was the subject of a memorandum dated December 17, 2017, and discussed at a public hearing on December 21, 2017; 2017-2018 #118, #119, #120, #121, and #122 were the subject of memorandums dated January 23, 2018, and discussed at a public hearing on January 25, 2018; and 2017-2018 #123 was the subject of a memorandum dated January 24, 2018, and discussed at a public hearing on January 26, 2018. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To require health insurers, starting June 1, 2019, to post on their websites and provide in writing upon request from a covered person in a form and manner determined by the commissioner of insurance (commissioner) the following information for each provider, health care service, and health insurance plan:
 - a. The contract terms, which are the negotiated payment or reimbursement amounts under the contract between the carrier and a provider;
 - b. The cost-sharing arrangement, which is the cost for health care services that are not reimbursed by the carrier; and
 - c. Prescription drug prices, which are the prices carriers have negotiated with providers, pharmacies, or distributors;
2. To require health insurers, starting June 1, 2019, to annually, or more frequently if required by the commissioner, publish detailed information, in a form and manner determined by the commissioner, regarding remuneration from rebates or other forms of incentive received as the result of paying for health care services or purchasing prescription drugs or medical devices;

3. To require the commissioner to adopt rules necessary to implement, administer, and enforce the requirements imposed on health insurers, to require the initial rules to take effect by April 1, 2019, and to require the commissioner to revise the rules as necessary thereafter;
4. To authorize the commissioner to suspend or revoke the license of an insurance carrier for violating the requirements or impose a civil fine of up to \$50,000 per violation, and impose a per-day civil fine of up to \$50,000 if the violation continues;
5. To prohibit any contract between a health insurer and health care provider issued, amended, or renewed on or after June 1, 2019, from including any provision that restricts the ability of a provider or health insurer to provide patients with the information required to be published by the proposal and to specify any such provision is void and unenforceable;
6. To defined terms used in the measure; and
7. To specify that the measure takes effect on January 1, 2019.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?

- c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The technical comments raised in the memorandum for initiative 2017-2018 #146 are incorporated by reference in this memorandum. There are no new technical comments.